

Florida Keys National Marine Sanctuary Advisory Council

**August 19, 2003
Marathon Garden Club**

FINAL MINUTES

Members Present

Wayne Blevins	Don Kincaid
Jack Curlett	Mark Klingbeil
Fran Decker	Duncan Mathewson
Greg DiDomenico	Martin Moe
Todd Firm	Ken Nedimyer
Richard Grathwohl	George Neugent
Debra Harrison	Bruce Popham
David Hawtof	Deborah Shaw
	Brad Simonds

Alternates Present

Jody Thomas for Nancy Klingener

Call to Order/Introductions

Chair Neugent called the meeting to order at 9:08 a.m. He welcomed new council members Jack Curlett (Citizen-at-Large, Upper Keys), Mark Klingbeil (Recreational Fishing) and Brad Simonds (Charter/Sport Fishing). He also welcomed Dr. Ruth Ewing from NOAA Fisheries.

Approval of Minutes/Adoption of Agenda

The Minutes of the June 17, 2003 meeting were approved as presented. The Agenda was modified to include a discussion of recommendations from the Council, supported by the law enforcement division of Fish & Wildlife Conservation Commission (FWC), to the Florida Legislature concerning mini-season.

Recognition/The Queen of Nassau – LCDR Dave Score (FKNMS)

LCDR Score, on behalf of Sanctuary staff, presented Superintendent Billy Causey with a state-of-the-art dive watch, in recognition of his 20 years dedicated service to the National Marine Sanctuary Program. John Halas and George Neugent made supportive remarks. Billy Causey expressed his deep appreciation.

LCDR Score described the multi-faceted process by which a 200 foot vessel in 230 feet of water off Lower Matecumbe was identified and mapped with the assistance of staff from the Monitor mission and National Undersea Research Center. The first modern steel naval vessel built in 1904 for the Royal Canadian fleet, The Canada, was renamed The Queen of Nassau in 1924 after passing into private hands and sank in 1926 after a purported, though unverified, boiler room accident off the Upper Keys. Some diagnostic artifacts from the ram bowed vessel are on display in the Sanctuary office in Key Largo,

where building plans, digital mosaic plans and multi-beam side-scan sonar plans are also kept.

Public Comment

M.J. Taylor of Big Pine Key and a volunteer in the stranding network addressed two issues. She admitted letters into the record for the meeting from others with the same concerns. First, that during the release of the pilot whales from Big Pine into the open ocean, stranding volunteers on approved boats were prevented from observing the release by an FWC officer. Second, that federal agencies hired outside consultants to tag the animals before release and to conduct the actual release, despite no prior involvement with the three-month volunteer rehabilitation of the animals.

Rick Trout of the Marine Mammal Conservancy (MMC) noted the pride experienced by all the people involved in the rescue, rehabilitation and release of the five stranded pilot whales, a situation that received broad media coverage. He thanked George Neugent, Billy Causey and the community of Big Pine Key for expediting first of all the release of two of four stranded pilot whales in 1995, and the five animals just released. He acknowledged Dr. Roy Crabtree for working with the stranding network and commended Laura Urian-Engleby and Blair Mase for their efforts with the scientific community and headquarters in allowing the calf to be released and not sent to Sea World in San Diego. Discussion concerned the suitability of pilot whales for captivity and the fate of the calf's mother, which is unknown.

Russ Rector of the Dolphin Freedom Foundation said that the only animals that survived the stranding were the five in rehabilitation. He said that lack of local control was responsible for the stranding failure of April 18. He observed that there are two outcomes to rehabilitation, either the animals die or they are released. He reported that National Marine Fisheries Service is paying Jeff Foster an exorbitant amount of money for the release but has not given any money or support to the Marine Mammal Conservancy. Mr. Rector commented that government must govern least and coordinate most and that National Marine Fisheries does the opposite, and should place caches of equipment throughout the Keys. He noted that MMC received its Letter of Agreement a couple of days before the release although in-water rehabilitation in the Keys has been suspended since March 2003 due to an incident involving a manatee and pygmy sperm whale in rehabilitation. He encouraged the Council to support his resolution that all whales and dolphins that strand in Monroe County and are proven to be healthy must be returned to the wild.

Discussion concerned the need and desire on the part of the volunteers for a debriefing on the stranding, which Chair Neugent observed was a phenomenal volunteer effort, despite some mistakes being made, that will be corrected in the future.

Sanctuary Superintendent's Report – Billy Causey (FKNMS)

Mr. Causey thanked Sanctuary staff for the tremendous surprise. He welcomed the three new Council members, and thanked them for their patience through the process. He presented the attached report, and apologized for leaving the meeting early.

Florida Department of Environmental Protection Agency (DEP) Report – Kacky Andrews

Ms. Andrews recognized Anne McCarthy as the new state administrator in the Keys, following Fritz Wettstein's return to Tallahassee. She noted that Anne McCarthy and Billy Causey will be taking the Sanctuary's annual report before the Governor and Cabinet in September. At the end of that month Ms. Andrews, DEP Deputy Secretary Bob Ballard, and Billy Causey will represent the State of Florida at the United States Coral Reef Task Force meeting in Saipan and Guam.

Ms. Andrews gave a PowerPoint presentation on the involvement of DEP and other agencies with the defunct Piney Point phosphate plant, starting with automatic state stewardship following on the bankruptcy of the plant. The state is trying to close the plant which is located on the edge of Tampa Bay and consists of massive ponds of highly acidic untreated water contained at present by up to 70 foot berms. The site is potentially catastrophic for aquatic life in the event of a blow-out following heavy rainfall. Following leakages in March, DEP applied to the United States Environmental Protection Agency (EPA) for an emergency permit to release treated water from the plant into the Gulf of Mexico. She noted that other options for removing water from the site are used including trucking, reverse osmosis and limited releases. Treated water from the site is dispersed over 100 miles offshore in over 200 meters depth of water; pH is close to neutral, the water is not toxic and the only elevated level is of ammonium nitrogen which is about 25 mg/liter, compared to the marine standard (depending on temperature and salinity) of about 5-11 mg/liter. The dilution rate of treated Piney Point water being dispersed into the Gulf is 200:1 in 2 minutes or 1000:1 in 4 hours, and is around 2 million gallons per day compared to the 200 billion gallons produced by the Mississippi River into the Gulf per day. She conceded that this is nutrient loading and the 25lbs per day of nutrient loading from Piney Point dispersal may be compared to the 9 million pounds from the Mississippi and 2,700lbs from various sources per day in the Keys. She reported that to date 7 barge trips have been completed and 14 million gallons of treated water released in the EPA-approved dispersal area at a set rate and a set speed at a cycle of 4.5 days. Monitoring is taking place both by DEP and independent entities through dye studies, drifter buoy, satellite imagery and nutrient sampling as well as monitoring for algal blooms. No scientists have been able to discern any difference between Mississippi River water in the Loop Current and Piney Point dispersal water. She said that Charles Kovach of DEP who is leading the monitoring effort does not see any implications for any long-term ecological harm from the treated wastewater in the Gulf. The DEP-EPA permit for dispersing 500 million gallons ends on November 30, 2003.

Discussion followed concerning the amount to be dispersed, which is around 200 million gallons, leaving 800 million gallons on site. Concern was expressed about the ability of the site to sustain further rainfall and Ms. Andrews indicated that DEP is confident that there will not be a catastrophe this year. Council members asked about long term measures for dealing with waste, and what is being done to make sure that this situation never arises again. Ms. Andrews replied that reverse osmosis and beneficial reuse will be used in the future, and that rules are being passed to make phosphate plants financially responsible for all their operations.

Upon further questioning, Ms. Andrews expressed regret for adding to the Mississippi River loading, but said that the alternative was a potential catastrophe which DEP is obliged to prevent. Mr. Hunt stated that there is no evidence that chlorophyll levels are being elevated as a result of the dispersal. Mr. Causey responded that the water is moving at such a fast rate that dispersal in a limited area will not have local cumulative effects, and that every effort in the planning stage of the dispersal was made to ensure that the water did not come near the Keys.

Discussion with Council members continued concerning the numbers and financial viability of phosphate mining operations in the State of Florida and alternative disposal methods. Concern was expressed that taxpayers are shouldering the burden of cleaning up the Piney Point site and that phosphate mining is an expanding industry.

Chair Neugent invited comments from David White of The Ocean Conservancy.

Mr. White provided additional background. He said that DEP knew for years that the company was threatened financially and over-looked some of the regulations that required audited financial statements. DEP took over responsibility for the site a year after it declared bankruptcy and the owners left the state. He observed that the area actually used for dispersal is a very small percentage of the area approved for dispersal. He added that due to the rainfall this year, there is actually more water on site than when DEP took it over. He noted that there are about 20-25 active or inactive phosphate sites in central Florida. With regard to the recommendations being discussed in the Legislature, he said that the regulation would only require financial security so that taxpayers do not have to pay for cleanup, but nothing is being done to ensure that it does not happen again. He added that a proposal by the phosphate companies to the Legislature to raise the severance fee was rejected. Mr. White observed that although it will take 18 months to build an incinerator, it is a better alternative than relying on other users to take the water, since during episodes of high rainfall when there is a greater need to dispose of water, other users have reduced demand for it. He said that there needs to be a long term plan that does not involve dumping waste in the oceans.

Mr. Causey observed that none of the agencies involved in this project are happy about it but DEP was at a point where it had to do something. He said that the lesson learned here is a clear one, that this is not an appropriate activity.

The Council decided to defer passing a motion until members had an opportunity to caucus and tabled the discussion for later. Ms. Andrews said that whether a motion is passed or not she will go to back to Tallahassee and share the Council's thoughts with DEP.

Florida Fish & Wildlife Conservation Commission Report – John Hunt (FMRI)

Mr. Hunt passed out information on the upcoming Commission meeting in Penasacola, with an opportunity to participate in an on-line panel mentioned in the materials. He reported that Dr. Roy Crabtree left FWC for a position with NOAA Fisheries and that he has been replaced by Mark Robson as Director of the Division of Marine Fisheries. He said that the next meeting after September will be the November 19-21 meeting at Hawk's Cay, with several items of interest to the Keys on the agenda. There will be a joint social event with the Advisory Council.

Sanctuary Law Enforcement Report – LT Joe Scarpa (FWC)

LT Scarpa, representing Captain Horadam, presented a video on diving for lobster on artificial habitat that is now illegal under the new state law. He demonstrated how officers locate by diving the various kinds of habitat, from cut up pieces of dumpster to pre-formed, steel re-inforced concrete slabs with rebar handles. These 'habitats' not only attract lobster, but fish like red grouper and hogfish and kill seagrass. He said that it is difficult for officers to make a case against someone illegally fishing from these illegal habitats, as the law is written so that officers actually have to see someone physically doing it and the lobster fishermen have the advantage in evasion. He noted that although officers patrol the area of the lower Keys up to the Content Keys at random, they have other duties within FWC and the Sanctuary.

Discussion followed concerning FWC rules for hunting near feeders, for which a ticket can be issued, indications of criminal behavior near illegal habitats, and whether a sunken vessel constitutes illegal habitat from a harvesting perspective.

Chair Neugent said that he and Ms. Harrison will work with LT Scarpa on language to bring terrestrial and marine harvesting rules more into line. They will bring this to the next Advisory Council meeting and then forward recommendations to the FWC.

Hair-Hooking for Baitfish in Sanctuary SPA's – CAPT Steve Leopold (Islamorada Charter Boat Association)

CAPT Leopold introduced Diane Harbeing, the Treasurer of the Association, and read the attached remarks. He emphasized that Islamorada is the destination for fishermen wishing to catch sailfish with live ballyhoo, and that Association members protect what they fish for and the waters in which they fish. He itemized a list of potential compromises between the Association and the Sanctuary that would enable charter boats and recreational fishers to hair-hook for baitfish in Sanctuary Preservation Areas (SPA's). He proposed that Alligator, Conch, Davis and Hen and Chicken SPAs be closed to ballyhoo fishing from April 16th to October 14th, both by cast net and hair-hooking, which covers the spawning season; that permitted baitfish catchers display a flag or decal to aid law enforcement; that maintenance of a log book is essential for scientific monitoring; that the Association will consider a bag limit and that they would give up catch-and-release trolling in Alligator and Conch Reef SPA's.

Chair Neugent invited Superintendent Causey to explain to new members what is permissible in Sanctuary SPAS.

Billy Causey said that any hook and line fishing whatsoever is illegal in SPAs. After public comment on the original management plan in 1995-6, Sanctuary management agreed with charter captains to catch-and-release trolling through Alligator, Conch Reef and Sombrero SPAs and off Key West. Sanctuary management also agreed to the use of cast nets by permit only in those areas. He added that this causes enforcement and compliance challenges and that although he appreciated Captain Leopold's options and proposals there is quite a distance from being able to do anything with the regulation as it stands.

After lengthy discussion among Council members concerning fishing methods, management options, the state of the fishery and the importance of live bait to the charter boat industry, it was agreed, upon motion by Ms. Harrison, seconded by Ken Nedimyer, to form a Working Group to revisit this issue that was intensively debated during the development of the original management plan. It was determined that the Working Group of Council members, co-chaired by Ms. Harrison and Mr. Nedimyer, will include members of the public and Sanctuary staff and will meet in the Islamorada area with a view to bringing recommendations to the Sanctuary Advisory Council at the October meeting. The motion passed unanimously. Concern was expressed about enforcement and the significance of preservation areas.

Pilot Whale Update – Dr. Ruth Ewing (NOAA Fisheries) and Robert Lingenfelter (Marine Mammal Conservancy)

Chair Neugent recognized the stranding volunteers for their long, hard work. Richard Grathwohl recognized David Hawtof for his initiative on the first day of the stranding.

Dr. Ewing presented apologies for absence from Laura Urian-Engleby and Blair Mase and said that a debriefing on the pilot whale response, rehabilitation and release will take place as soon as possible. She said that although unable personally to attend, she understood that the release of the animals in the same area at about the same time was successful, and that the animals are being monitored by air and water, particularly the lone calf, animal No. 7, which is vulnerable to both predation and starvation and is outside of natural whale habitat. She apologized to the stranding volunteers who were unable to witness the release first-hand, due to a mis-communication between NOAA Fisheries and FWC. She noted that U.S. Fish & Wildlife gave emergency permission for lagoon rehabilitation despite the temporary moratorium. Dr. Ewing expressed confidence that the debriefing process will allow for a learning opportunity of both the positive and negative elements to come out of this difficult stranding.

Mr. Lingenfelter said that the debriefing will address problems concerning the stranding response in a constructive manner, and that the rehabilitation and release went very well. He commented that the VHF tags were programmed to be on for 12 hours and off for 12 hours as part of a standard factory package and that in future releases this practice will be re-examined. He indicated that all the monitored animals appear to be feeding, including No. 7, and that they are traveling significant distances.

Mr. Blevins moved that the Sanctuary Advisory Council recommend to Sanctuary managers that National Marine Fisheries Service has 45 days from today to respond to the four conditions that were put before them in January of 2002. It was seconded by Duncan Mathewson and upon Roll Call it passed by a simple majority with three No votes and two abstentions.

Mr. Lingenfelter observed that the natural lagoon issue raised by the Endangered Species Act is about to come to resolution with U.S. Fish & Wildlife Service through the implementation of a double barrier system. He thanked the Council.

Mr. Trout made final comments.

Pew Oceans Report – David White (The Ocean Conservancy)

Mr. White gave a PowerPoint presentation entitled “Changing Tides: Developing new strategies for protecting America’s oceans”. He said that there are a number of new initiatives for ocean governance created both by federal law and private enterprise. One is the privately funded Pew Ocean Commission Report “America’s Living Ocean: Charting a Course for Sea Change” which is available in both Executive Summary and CD format from www.PewOceans.org. He gave a history of United States ocean policy, beginning with the formation of the Stratton Commission in 1966 through President Reagan’s extension of jurisdiction to 200 miles and noted that after a gap of 30 years there are now two ocean councils, the second being the U.S. Ocean Commission created by the Oceans Act in 2000. Both councils have held stakeholder meetings nationwide. Subjects investigated are non-point source pollution, point source pollution, coastal development – particularly wetlands loss, over-fishing, habitat alteration, aquaculture, invasive species and climate change. Mr. White elaborated in depth on all these points. He said that the Pew Commission recommended that the United States enact a national ocean policy similar to the Environmental Protection Act and the National Environmental Policy Act, establishing an independent national ocean agency and establishing a national system of marine reserves, as well as strengthening existing legislation. Within fishery management the Commission noted the need to separate conservation and allocation decisions. Overall, the Commission concluded that the adoption of an ocean ethic, with the oceans viewed as a public trust, is necessary and what is needed is a compass to tell the nation where it needs to be going, a chart that defines a new national ocean policy and wind in the sails from engaged citizens. Mr. White added that habitat protection and ecosystem integrity are imperative in managing ocean resources.

Mr. White said that the federally mandated Ocean Commission is required to submit its plan to the governors of coastal states before reporting to Congress and the President. He observed that within the State of Florida, the Governor’s Ocean Committee conducted a similar review which concluded in 1999, given the importance of coastal resources to the state, that there is a need to improve information and understanding of ocean processes and ecosystems, coordinate and manage a comprehensive ocean management framework and foster stewardship of the ocean. The Florida Fish & Wildlife Conservation Commission was charged with implementation. He concluded by saying that it is up to the citizens of the country to engage in a dialogue about how oceans are managed.

Discussion followed concerning the Pew Oceans Commission recommendations on managing the recreational fishery, which is primarily through marine zoning. Although FWC commissioners are not sympathetic to marine zoning, this does not necessarily reflect the views of staff.

National Marine Sanctuaries Volunteer Program – Mary Enstrom (NOAA/The Nature Conservancy)

Ms. Enstrom gave some background to her engagement as the national coordinator of a program for volunteers in the sanctuaries. She described the development of products for use by all the sanctuaries available on NOAAs intranet, namely The Volunteer Program Learning Center, Creative Training and Key Elements of Effective Programs. She has also completed a Draft Volunteer Action Plan. Ms. Enstrom reported that the Marine Sanctuary Foundation, a non-profit organization, will likely be the carrier of insurance for volunteers within the Sanctuary Program. She said that she is working for The Nature Conservancy on partnerships with marine sanctuaries, using Hawaii as a pilot site and that all the sanctuaries have different needs. She indicated that state and corporate relationships as well as private organizations are an important component of the national volunteer program. Ms. Enstrom concluded by saying that although staff and money constraints are a concern to all sanctuary programs, there is a need to provide a national identity to the volunteer program.

Discussion followed concerning the status of volunteers diving within the NOAA program. Ms. Enstrom said that using private vessels is the most feasible way of dealing with the fact that only NOAA certified divers may dive from NOAA vessels.

Motions Arising from FDEP Report

After lengthy deliberation by Council members, the tabled discussion was brought to motion by Ms. Harrison:

- (1) The Florida Keys National Marine Sanctuary Advisory Council (FKNMS SAC) requests Sanctuary managers convey to Florida Department of Environmental Protection (FDEP) the outrage of this Council at the dumping of effluent from Piney Point phosphate facility into the Gulf of Mexico.
- (2) The FKNMS SAC requests FDEP to provide a detailed explanation as to why it has not proceeded to implement alternatives to discharging Piney Point wastewater into the Gulf of Mexico or Tampa Bay, including but not limited to, incineration, storage for processing, or land application on salt tolerant vegetation, or a combination thereof, before the expiration of the Environmental Protection Agency (EPA) ocean dumping permit.
- (3) Finally, the SAC requests FDEP provide an explanation of what steps will be taken to provide for the disposal of the remaining 800 million gallons of wastewater at that site in the future.

Ms. Shaw and Ms. Thomas seconded the motion, which passed unanimously upon voice vote.

Ms. Harrison offered a second motion:

The Florida Keys National Marine Sanctuary Advisory Council asks the Sanctuary managers to urge the Florida Legislature to strengthen existing or enact new laws to:

- (a) Require financial security bonds or other surety sufficient to secure the safe closure of phosphate processing facilities and properly dispose of all toxic, hazardous and other unsafe materials on site.
- (b) Enact provisions to ensure that the emergency situation that occurred at the Piney Point facility can not happen again; and
- (c) Enact appropriate criminal liability laws sufficient to hold corporate officials individually liable and criminally responsible for falsifying financial statements and pollution/Hazardous Material reports.

Ms. Shaw seconded the motion, and upon clarification from Mr. White that the Mulberry Corporation provided unaudited financial statements, the motion passed unanimously upon voice vote.

Florida Keys Water Quality Improvements Program – Cecelia Weaver (South Florida Water Management District - SFWMD)

Ms. Weaver gave a PowerPoint presentation reviewing the current status of the program that is implemented through co-sponsorship between the South Florida Water Management District and the U.S. Army Corps of Engineers (Corps), authorized by the Florida Keys Water Quality Improvements Act of 2001, which specifies that the Corps can provide up to \$100 million for wastewater projects. She said that under the Act the state can provide up to 35% in matching funds and that design costs can be reimbursed to the entities, but that construction costs cannot until there is a federal appropriation. A team representing each municipality, unincorporated Monroe County, the State of Florida, Department of Community Affairs, the Florida Keys Aqueduct Authority, SFWMD, U.S. Environmental Protection Agency and the Key Largo Wastewater Treatment District is in place to establish goals and objectives for the program, to review and approve a management plan to prioritize projects for funding, to determine allocation of funding and to approve the schedule. There was no appropriation in the congressional budget for FY2003, but the project is ready to move forward with construction when the next opportunity for an appropriation arises in FY2004.

Ms. Thomas commented that the Senate has included \$1 million in an appropriations package for the purpose of allowing the state to provide matching funds, which will put the Corps beyond its official policy of not funding any new projects. She offered the following motion:

That the Florida Keys National Marine Sanctuary Advisory Council support the implementation of the Florida Keys Water Quality Act and that Chairman Bill Young support the Senate appropriation of this committee to reconcile the appropriations bill.

Ms. Harrison seconded the motion which passed unanimously upon voice vote.

Lobster Virus Study – Dr. Don Behringer (Old Dominion University)

Dr. Behringer gave a PowerPoint presentation on field studies and laboratory experimentation by a group of researchers from the Virginia Institute of Marine Science and Florida Marine Research Institute on a recently documented herpes-like virus that afflicts 5% of juveniles of the Caribbean spiny lobster (*Panulirus argus*) in hard bottom habitat throughout the Florida Keys. He presented results of fieldwork to determine prevalence and distribution of diseased lobsters and laboratory experiments to determine methods of transmission of the virus, which can be through injection, ingestion and proximity in the water. One interesting result was that the presence of a diseased lobster negatively affects the behavior of a normally gregarious healthy lobster over den selection. Dr. Behringer outlined future research directions that the group will undertake.

Wide-ranging discussion concerned transmission of the virus between species, possible origin of the virus, impacts on the commercial fishery, impacts of the recreational fishery, and a possible connection between the virus and water quality.

Unfinished Business – Mini-Season License

After deliberation by the Council and with clarification provided by Mr. Hunt, Dr. Shaw offered the following amended motion to Mr. Nedimyer's motion:

That the Florida Keys National Marine Sanctuary Advisory Council re-affirms the request made to the Fish & Wildlife Conservation Commission in November 2002 to have a mini-season license of \$10, separate from the regular \$2 season and to institute a mini-season (two day sport-diver lobster season) system of allotting allowable take by issuing six lobster tags per diver per day.

Ms. Harrison seconded the motion which passed unanimously upon voice vote.

Other Business

LCDR Score, on behalf of Dan Basta, requested that the Council review the guidelines in their package to the Sanctuary Act Reauthorization and provide comments and recommendations to Billy Causey by December. It was agreed to provide staff review at the October meeting. He also requested that Council members pass comments on the artificial reef policy document to Mr. Causey by September.

Adjourned – 4:55 p.m.